

Statement of

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COMMITTEE ON GOVERNMENT REFORM

on

**“Can You Clear Me Now?: Weighing “Foreign
Influence” Factors in Security Clearance
Investigations”**

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Chairman Davis, Ranking Minority Member Waxman and Members of the Committee on Government Reform. First, I would like to commend you , Mr. Chairman and your colleagues, for your fast response and action in helping to resolve the precarious situation created because of the daunting backlog in the security clearance process.

I would also like to thank you for the opportunity to share my views on improving the security clearance process. My name is Walter Nagurny. I am the Security Director for the U.S. Government Solutions business unit of Electronic Data Systems (EDS) Corporation. I've served EDS in that capacity for two years. I have experience that dates back to 1987 as a government employee, and for the past 10 years as a contractor, related to security clearances. My responsibilities at EDS include oversight of all activities related to security clearances and other vetting of personnel required in support of contracts awarded to EDS by the Federal Government. EDS has a sizeable cleared workforce that's centered in the National Capital Region, but extends around the world.

As a major supplier of Information Technology (IT) to the Federal Government, a very significant challenge EDS faces is to identify and hire capable people who can provide the leading-edge expertise government customers expect from EDS. Many positions in EDS Government Solutions require either a Public Trust approval or a security clearance for access to classified information. Some positions require both. One practice EDS utilizes in trying to identify appropriate candidates is to conduct a voluntary pre-screening of candidates with respect to the likelihood the clearance needed for access to classified information will be granted. At this point in the process, EDS has not yet seen a candidate's clearance paperwork (SF86 Form). Candidates are asked not to divulge personal information to EDS, but are required to read an EDS internal-use document that provides an overview of the clearance process and has detailed information about the adjudicative standards in the "Hadley Memorandum." EDS does not make a value judgment regarding a candidate's eligibility for the necessary clearance. Once educated about the process, some candidates then decide at this point that they do not want to face the scrutiny of a security clearance investigation. Other candidates decide that the approval process

could lead to an unfavorable decision, or that an approval process might be so lengthy they could be at risk of being laid-off before the clearance is approved.

The pre-screening conducted by EDS serves two purposes. First, a concerted effort to minimize, if not avoid, drawn-out clearance requests helps the overarching U.S. Government security clearance infrastructure, and is therefore good business. Pre-screening's other purpose is to provide hiring managers with subjective data, based on prior clearance information, if any, they can apply towards their business decisions. In parallel with a candidate's review of the Adjudicative Guidelines, EDS managers are provided with an opinion of how long the manager can reasonably expect it will take until a clearance request is expected to be approved. Such opinions are in some cases objective, but in most cases are subjective. Regardless, having a general idea of how long it will be until an employee requiring a clearance can become productive is valuable information to a manager. EDS managers, in most cases, can analyze the impact of an expected lengthy approval process against the overall qualifications of candidates being considered for a position. In some cases the need to have a cleared employee on the job outweighs the technical qualifications of other candidates. That's unfortunate.

EDS takes no actions and makes no decisions that will impact an individual's eligibility for a security clearance. EDS will submit a candidate for a clearance under a contract that requires it as long as an EDS hiring manager made the decision that submitting the candidate is the best business decision to make. While EDS' procedures provide hiring managers as well as prospective employees with subjective information about how long it might take to gain approval for a security clearance, that opinion is but one data point amongst many that are factored into a decision to hire or transfer-in someone who must be submitted for a security clearance.

EDS has a good track record of getting both newly-hired and long term employees approved for a security clearance. One troubling area, however, is that some clearance requests languish for several months -- without any feedback or end in sight. Highly qualified, and perhaps as important, affordable, candidates often leave the company or pursue other opportunities inside the company. All too often highly qualified employees leave because a clearance decision took longer than eighteen months.

Looking back across the past five years, changes to the overall security clearance infrastructure have been positive and improved the process. I can cite the implementation of the Joint Personnel Adjudication System (JPAS) as a very significant change that is beginning to show a major, positive impact on the way contractors interface with government agencies regarding security clearances.

Other changes have made an impact. However, it is not as clear that the impact was entirely positive. The assumption of responsibility for DoD clearance investigations by the Office of Personnel Management (OPM) in March, 2005 is a case in point. I say that because, on the one hand, a (DoD) Interim Secret clearance is now being granted to many employees in less than five business days – some, in fact, overnight. Final Secret clearances are often being granted within 60 days. On the other hand, EDS has approximately one dozen employees who were submitted for a DoD security clearance prior to March, 2005. However, no one seems to be in a position to explain why these cases have not moved forward. Several of those cases were opened in 2002. In some cases, the Defense Industrial Security Clearance Office has recommended simply waiting. In other cases EDS is advised to cancel the request and re-submit it.

EDS has many employees who are either naturalized United States Citizens; have non-citizen immediate family members; or hold dual citizenship. The technical abilities these employees bring to both EDS and to our government customers are not in question, but getting a security clearance for them is often difficult. Moreover, whether or not the “foreign preference” concern is the issue that drives a lengthy clearance approval is conjecture since the contractor is not provided with feedback.

EDS recognizes the indisputable need to keep classified and other sensitive information out of the hands of non-citizens. It is no doubt a huge challenge to distinguish “foreign preference” individuals who could be blackmailed into providing classified information from individuals who would never contemplate divulging information. Many cleared EDS employees who are naturalized U.S. citizens openly acknowledge that a portion of their income is sent to family members in their country of origin. The Hadley Guidelines address such practices, as well as

factors that mitigate security concerns. Cleared personnel sending part of their income outside of the United States could lead to the conclusion the employee might take actions that are harmful to the interests of the United States. To do so would likely eliminate a major source of family income. As significant numbers of naturalized citizens accept positions in the IT industry, the need for government contractors to submit naturalized citizens for a security clearance will increase.

EDS' experience indicates that, as a group, naturalized citizens, follow above-average security practices. Cleared EDS employees who are naturalized citizens have an outstanding record of filing required security reports, complying with classification rules, and following security procedures.

While EDS has no cleared employees who retained their dual citizenship, there are several cases each year of a U.S. citizen who holds dual citizenship encountering difficulty in the clearance process. While the Hadley Guidelines speak of an individual expressing willingness to renounce the non-U.S. citizenship, in practice these cases end up at the Defense Office of Hearings and Appeals (DOHA). After the employee formally renounces the non-U.S. Citizenship and DOHA receives documentation from the respective embassy, the clearance is approved, and I might add, swiftly. In some cases it is both difficult and expensive, to renounce citizenship in a country and get requisite documentation from that country's government acknowledging the renunciation. A dual citizen who submits proof that it is his expressed intent to renounce non-U.S. citizenship would seem to satisfy the Adjudicative Guidelines.

A real time example: A current EDS employee with excellent technical qualifications, that EDS wants to assign to a business critical position, was recently denied an Interim Secret clearance. This employee is a veteran of the United States Marine Corps and retains a dual citizenship in Portugal, where he was born. There are no other apparent issues. In this case, it's going to take a long time before this U.S. citizen is granted a clearance. In the end, once this employee is formally asked by DOHA to renounce his Portuguese citizenship, he will no doubt receive swift approval. There must be a better method to handle cases in which dual citizenship is the issue .

In closing; a few observations regarding the overarching status of contractors being processed for security clearances.

It is fairly common for a recently completed Single Scope Background Investigation (SSBI) to go unused while an entirely new SSBI is conducted. This occurs, amongst other reasons, when someone changes jobs and needs a clearance with a different agency. On several occasions, EDS has been told that the finished, but un-adjudicated, investigative work cannot be shared between agencies.

Clearance requirements flow to a company as part of a contract. Whether security requirements flow through a DD Form 254, or an equivalent document, there are significantly fewer clearance problems when the security requirements are well-written, clear, and explicit.

With regard to Interim Secret clearances, EDS sees what appear to be identical “foreign preference” issues not being weighed identically.

Many companies, including EDS, conduct a comprehensive background investigation and drug screening on all potential employees as a condition of employment. These investigations are, in some cases, conducted by the same investigators doing investigations under a contract with OPM or other user agencies. Since an Interim Secret clearance is granted, I have been told, after only a review of a candidate’s answers on an SF86 form, it appears that a potential source of relevant information is not being used. It is conceivable that standards could be developed to leverage (on a voluntary basis) the information obtained in pre-employment investigations done by many National Industrial Security Program companies, thereby leading to more informed decisions being made more swiftly.

I thank you. I am happy to answer any questions you might have, Mr. Chairman.